THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

SECOND APPEAL NO. 722 OF 2000

Shri Chandrakant Shankarao Machale. ... Appellant.

V/s.

Smt.Parubai Bhairu Mohite. ... Respondent.

Mrs.S.A.Mudbidri for the appellant.

Lalit Jain for respondent No.1.

CORAM: D.B. BHOSALE, J.

DATED: 28th November 2006.

P.C. :

Heard learned counsel for the parties.

2. The appellant has impugned the judgment and order dated 5th August 2000 rendered by the appeal court by which the first appeal filed by the respondents- plaintiffs was allowed holding that the suit property was mortgaged by the deed dated 28th February 1983 and that he is entitled for redemption of the mortgage.

2. The only contention urged by Mrs.Mudbidri, learned counsel for the appellant, as formulated in ground No.11 in the memo of appeal, was that the deed of mortgage was executed on 28th February 1983 and, immediately, on the next day a lease-deed was and as a result thereof the mortgage-deed dated 28th February 1983 stood cancelled. It was further submitted that in view of the execution of the lease-deed dated 1st March 1983, the appellant became tenant of the respondent and, therefore, the suit for redemption of mortgage itself was not maintainable and it ought to have been dismissed with costs.

3. In so far as nature of the document dated 28th February 1983 is concerned, it is not disputed that it being a mortgage deed. Admittedly, the lease-deed dated 1st March 1983 is not a registered document as required under section 17 of the Registration Act, 1908. In view thereof, the appeal Court has rightly discarded the said lease-deed and rejected the contention of the appellant-defendant that the appellant was tenant of the respondent-plaintiff. The Court below has further held that since the document dated 1st March 1983 had not been registered it does not confer any right in favour of the appellant and, therefore, the document i.e. Mortgage-deed dated 28th February 1983 creating relationship between the plaintiff and the defendant as mortgagor and mortgagee has not been extinguished. The Trial Court had failed to take

into account provisions of section 17(1)(b) of the Registration Act. The observations made by the appeal Court in paragraphs-14 and 15 of the impugned judgment in respect thereof, in my opinion, warrant no interference.

4. In my opinion, no substantial question of law is involved in the present appeal. Considering the findings of fact recorded by the Court below and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under section 100 of Civil Procedure Code, 1908 to disturb the findings of fact, I am not inclined to interfere with the instant second appeal and it is dismissed as such.

5. At this stage, Mrs.Mudbidri, learned counsel for the appellant prays for stay of this order. Though Mr.Jain, learned counsel for the respondent opposed this prayer, in my opinion, ends of justice would be met if the appellant is given four months time to vacate the premises on his furnishing usual undertaking to this Court within a period of four weeks from today. It is made clear that filing of undertaking and grant of time to vacate the premises shall not curtail the right of the appellant to carry the matter further, if he so desires. However, if the appellant fails to file usual undertaking within the aforestated period, the respondent shall be at liberty to execute the

decree.

6. Appeal stands disposed of. No order as to costs.

(D.B.BHOSALE, J.)